

This is an appeal by the respondent from an order awarding medical benefits following preliminary hearing. Respondent contends that the record does not support claimant's assertion that she suffered an accidental injury arising out of and in the course

of her employment. The Appeals Board takes jurisdiction of the appeal pursuant to K.S.A. 44-551 and K.S.A. 44-534a.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant has alleged and testified that she suffered an accidental injury on June 25, 1993, while working for the respondent. She indicates that the injury occurred when she was picking up a stack of invoices printed off a computer. She states that as she stood up she experienced pain in her back and right leg. At the time of the claimed injury she was employed at Best Temps, Inc. and was assigned to do work at Mid-Central-Sysco.

On June 29, 1993, and again on July 6, 1993, claimant went to the emergency room with complaints relating to her low back. She was then referred to and treated by Dr. Kozikowski. The doubts about claimant's alleged accident of June of 1993 arise from the confusing if not inconsistent histories found in the various medical records. In several instances those records reflect a February 15, 1991, date of accident and list a different employer. On her initial visit there is also a reference to experiencing sudden pain while stepping down out of the shower.

Although the records are unclear, the Appeals Board believes that other evidence presented may explain the apparent inconsistencies. Claimant acknowledged that she did have a February 15, 1991, injury while working for another employer. The injury was also to her low back while lifting a box. Claimant testified that in June of 1993 she had initially thought the problems she was having related primarily to the February 1991 accident. She did not consider herself to have suffered any new injury until Dr. Kozikowski had described it as a new injury in response to the history she gave him. Claimant did not see Dr. Kozikowski until July 19, 1993. In addition, while the records often list the February 15, 1991, date of accident they also show the onset of her current problems as June 25, 1993. In the records relating to her initial visit, even though there is a reference to pain while stepping out of the shower, the records also refer to a recurrence of low back pain over the last three to four days, and state that June 25, 1993, is the date of onset of problems.

On the basis of this evidence it seems quite possible that claimant did not initially believe she suffered a separate and new accident until she saw Dr. Kozikowski. She therefore gave a somewhat inconsistent history which relates the onset of symptoms as June 25, 1993, but listed the date of accident of February 15, 1991. Therefore, while not free from doubt, the Appeals Board believes that for purposes of preliminary hearing the evidence is adequate to establish a new injury or aggravation on June 25, 1993, and the award of medical benefits for that injury is, therefore, appropriate.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard dated March 9, 1994, awarding medical benefits to claimant in this case is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 1994.

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

---

cc: Timothy M. Alvarez, 880 New Brotherhood Bldg, 753 State, Kansas City, Kansas  
66101  
Matthew W. Tills, 801 Walnut, Suite 300, Kansas City, Missouri 64106  
Steven J. Howard, Administrative Law Judge  
George Gomez, Director